Smithfield Packing Company, Inc. *and* Deloris Jones *and* Victor C. Langhorne

Food Processors Local 1046 of the Laborers' International Union of North America *and* Deloris A. Jones *and* Victor C. Langhorne. Cases 5–CA–20106, 5–CA–20479, 5–CB–6180, and 5–CB–6297

June 27, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

On August 2, 1990, Administrative Law Judge Donald R. Holley issued the attached decision. The General Counsel and Charging Party Langhorne filed exceptions, the General Counsel filed a supporting brief, and Respondent Local 1046 filed a brief opposing the exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions[1] and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The consolidated complaint in this case alleges that Respondent Local 1046 violated Section 8(b)(1)(A) and (2) by refusing to honor employee revocations of dues-checkoff authorizations and by continuing to accept union dues deducted from employees' wages after the employees had resigned from union membership. The complaint further alleges that Respondent Smithfield Packing Company violated Section 8(a)(1) and (3) by refusing to honor its employees' revocation of their dues-checkoff authorizations and by continuing to deduct union dues from their wages and remit them to Respondent Local 1046 after the employees had resigned from union membership. The judge dismissed the complaint in its entirety. Pursuant to our decision in *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB 322 (1991), and as explained below, we reverse the judge's decision in substantial part, concluding that, with the exception of the 8(b)(2) allegation against Local 1046, the Respondents violated the Act as alleged in the complaint.

I. FACTS, JUDGE'S DECISION, AND EXCEPTIONS

The facts are more fully detailed in the judge's decision. Those significant to our determination are as follows. Respondent Local 1046 represents a bargaining unit of more than 1200 employees at Respondent Smithfield's meat packing plant. The Respondents have been parties to a series of collective-bargaining agreements, the most recent ones in effect from July 1, 1985, to July 2, 1989, and a successor agreement effective from August 21, 1989, to June 27, 1993. The agreements, specifically acknowledging Virginia's ''right to work'' statute, do not contain union-security provisions. Article III of the agreements provides for deduction of union dues pursuant to a voluntary checkoff authorization executed by employees who are, or wish to become, union members, and it sets forth, inter alia, conditions for revoking such a checkoff authorization.[2] The checkoff authorization form that employees signed in order to cause dues to be deducted from their wages restates these conditions on revocability.[3] The parties stipulated that each of the alleged discriminatees in this proceeding executed a checkoff authorization containing the language quoted in the preceding footnote.

The significant events in this case take place against a factual background which includes Local 1046's trusteeship status, imposed by the International Union in June 1988, the rising dissatisfaction of many

[1] Charging Party Langhorne's exceptions, addressing matters neither contained in the record nor relevant to our review of this proceeding, are denied. Charging Party Langhorne also has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[2] Art. III states in relevant part:

> Upon written authorization by employees who are members of the Union or who wish to become members, the Company will make deductions for Union dues in accordance with the stipulation in the voluntary check-off authorization in an amount certified by the Union to the Company. The Company will make deductions for Union dues from all members of each week of employment except in cases of layoff, leave of absence, and termination. Back dues will be deducted from Union members for a maximum of four (4) weeks in the case of absence from work. The Company will deliver by the 10th of each month, the sum to the Financial Secretary of the Union or such officers of the Union as it may designate in writing upon his receipt therefor:

The authorization shall be as follows:

> I hereby authorize and direct my employer to deduct from my wages my dues owing to the Union and direct that such amounts so deducted to be sent to the Secretary-Treasurer of such Local Union for and on my behalf.
>
> This authorization and assignment shall be irrevocable for the period of the existing contract between my employer and the Union, or for one year, whichever is less, and shall automatically renew itself for successive contract or annual periods, unless I give written notice of my desire to revoke same to the Company and the Union at least sixty (60) days, and not more than seventy-five (75) days, before the periodic renewal dates of this authorization and assignment. The periodic renewal date shall be determined by the date the authorization was signed.

[3] The authorization states:

> I hereby authorize and direct my Employer to deduct from my wages Initiation Fees (where applicable) and Working Dues—owing to Local Union No.—of the Laborers' International Union of North America and direct that such amounts so deducted be sent to the Secretary-Treasurer of such Local Union for and on my behalf.
>
> This authorization and assignment shall be irrevocable for the period of the existing contract between my Employer and said Local Union, or for one year, whichever is less, and shall automatically renew itself for successive contract or annual periods, unless I give written notice of my desire to revoke same to the company and to said Local Union at least sixty (60) days, and not more than seventy-five (75) days before the periodic renewal dates of this authorization and assignment.
>
> Social Security No. _____
>
> _____ Signed
>
> Date _____

employee/members with the trusteeship situation, the development of a rival independent union—the Independent Food Workers Union (IFWU), and a decertification campaign in spring 1989 involving the two unions. It was in this context that, at an IFWU meeting in late September 1988,[4] Victor Langhorne, the interim president of IFWU and an employee of Local 1046 prior to the imposition of the trusteeship, presented the employees attending with copies of a dues-checkoff revocation/membership resignation form, which Langhorne had drafted.[5] Langhorne told the employees at the meeting that in order to resign from membership in Local 1046 and revoke their checkoff authorizations they must complete two of the documents and deliver one to Local 1046 and one to Smithfield. He offered to deliver the employees' forms to Local 1046 himself if they would leave executed forms with him. Thereafter, on various dates in September and October, more than 70 executed resignation/revocation forms were brought by employees to Smithfield's personnel office. During the same period of time Langhorne collected more than 80 executed resignation/revocation forms; he delivered them to Local 1046 on October 31.

It is undisputed that the employees who submitted revocation/revocation forms as set forth above were deemed by the Respondents to have resigned from union membership. With respect to the revocation of checkoff authorizations, however, Local 1046 calculated that only three employees had submitted resignation/revocation forms within the ''window period'' relating to the anniversary date of the authorization's execution, as set forth in the authorization form and article III, above. Local 1046 notified Smithfield to stop checkoff with respect to these three employees if Smithfield had also received timely notice of an intent to revoke from the three.[6] Checkoff deductions for these three were terminated effective October 30.[7] Local 1046 sent letters to the other employees whose resignation/revocation forms had been received, stating that although it would honor their resignations from the Union their checkoff revocations were invalid because the latter were not submitted within an appropriate window period for revocation.

On December 16, Local 1046 received resignation/-revocation documents executed by six more employees. The Union again responded by notifying these employees that it acknowledged their resignations from membership, but that their checkoff authorization revocations were ineffective because they were not delivered within an appropriate window period.

Early the following April, a time when the decertification campaign was apparently in full swing and employees in general were switching their support from one rival union to the other, Langhorne prepared for another submission of resignation/revocation documents to the Respondents. At a union meeting he told those in attendance that he would collect employees' newly executed resignation/revocation forms and deliver them to both Respondents. He further explained that they would be submitted during the contract-expiration window period permissible for revocation, i.e., between April 18 and May 3. Subsequently, he collected newly executed forms from more than 40 employees. To these he added photocopies of forms executed by many of the employees between September and December of the year before and previously rejected by one or both of the Respondents as untimely for purposes of checkoff revocation. In late April, he mailed one large envelope to each Respondent, each envelope containing more than 100 executed resignation/revocation forms and a cover letter signed by Langhorne and identifying him as the president of IFWU. The Respondents received the envelopes on May 1. Langhorne testified that he did not contact any of the employees whose 1988 forms he resubmitted at this time, either before or after the resubmission. However, one employee specifically asked him to resubmit his 1988 form, and one employee made it known that he did not want his resubmitted, and Langhorne honored both employees' wishes.

By letter of May 10, Local 1046 responded to Langhorne by stating that it would not honor any of the resignation/revocation documents received on May 1. It noted, inter alia, that Langhorne's authority to submit the documents on behalf of the employees was

[4] All subsequent dates refer to the period between September 1988 and May 1989, unless otherwise noted.

[5] The form letter stated the following:

SMITHFIELD PACKING CO.
Smithfield, VA 23430

TO WHOM IT MAY CONCERN:

I hereby revoke authorization for union dues checkoff deduction for Food Processors Local Union 1046 as I am also hereby immediately resigning membership in said Local.

I am providing a duplicate notice of this revocation to the union. Please note that the National Labor Relations Board has held that when an employee effectively resigns membership in the union, the financial obligation he undertook as a *quid pro quo* for such membership also ceases, and the dues checkoff is revoked by operation of law, more restrictive language in the checkoff agreement notwithstanding (*Labor and Employment Law of Virginia*, 1987, p. 27).

_____
Signature/name

_____
Social Security Number

_____
Date

cc
Food Processors Local 1046
c/o Mary Pritchett, Acting Business Agent

[6] There is no evidence that Local 1046 took any affirmative steps to cause Smithfield to continue checkoff deductions regarding the employees whose requests to revoke it determined to be untimely.

[7] The three employees are not alleged discriminatees. Checkoff deduction for another employee, James Goodwin, was terminated in the third week of November, on a subsequent determination that his resignation/revocation form had also been timely submitted on October 31. Goodwin is an alleged discriminatee.

open to doubt; that most, although not all, of the documents were dated prior to the contract-expiration window period; and that some employees had requested that Local 1046 disregard the documents bearing their names.[8]

Subsequently, employee Johnrene Cary, by handwritten letter dated May 16, and employee Norman Newby, by handwritten letter dated May 19, informed Local 1046 that they were resigning from union membership. At the hearing Local 1046 acknowledged both receipt of the two letters and their sufficiency for resignation from the Union. However, it continued to receive dues deductions pursuant to their checkoff authorizations.

In his decision, which issued prior to *Lockheed*, supra, the judge, essentially relying on *Machinists Local 2045 (Eagle Signal)*, 268 NLRB 635 (1984), concluded that the alleged discriminatees' membership resignations in the instant case did not, by operation of law, revoke their checkoff authorizations because it was not adequately established that the moneys deducted pursuant to the checkoff authorizations constituted a quid pro quo for union membership. Further, it appears that the judge concluded implicitly that the alleged discriminatees did not comply sufficiently with the procedure for revocation of their authorizations during the appropriate window periods. Therefore, he dismissed the complaint.

The General Counsel's exceptions contend that the Respondents violated the Act as alleged, arguing: (1) that pursuant to *Pattern Makers League v. NLRB*, 473 U.S. 95 (1985), where union members have effectively resigned membership, as here, continued deductions based on checkoff authorizations are an unlawful restriction on their Section 7 right to resign from union membership; (2) alternatively, that the Board should adopt former Board Member Johansen's ''zero owed'' analysis as a basis for finding the unfair labor practices alleged;[9] and (3) also alternatively, that the resignation/revocation forms submitted to the Respondents on May 1 complied with the procedure for revocation during the contract-expiration window period, and that the Respondents accordingly violated the Act by failing to give them effect.

In its brief, Local 1046 offers opposing arguments for each of the General Counsel's contentions, and urges support of the judge's decision. It also argues, inter alia, that it appropriately refused to effectuate assertedly invalid, ''stale-dated'' checkoff revocation requests, i.e., those forms signed by alleged discriminatees but dated up to 7 months before their submission on May 1.

II. DISCUSSION

In our view, *Lockheed*, supra, mandates that the receipt by the Respondents of union membership resignations from the alleged discriminatees and their subsequent conduct in this case establish violations of the Act.[10] Accordingly, it is unnecessary for us to consider whether the employees' checkoff revocations were filed appropriately within one of the two window periods set forth in the checkoff authorization form and article III of the collective-bargaining agreement. In *Lockheed* the Board acknowledged judicial criticism of the *Eagle Signal* analysis[11] and set forth a new test for determining the effect of an employee's resignation from union membership on that employee's dues-checkoff authorization. The Board in *Lockheed* found that an employee may voluntarily agree to continue paying dues pursuant to a checkoff authorization even after resignation of union membership. In fashioning a test to determine whether an employee has in fact agreed to do so, the Board recognized the fundamental policies under the Act guaranteeing employees the separate rights to refrain from belonging to or assisting a union, as well as the principle set forth by the Supreme Court that waiver of such statutory rights must be clear and unmistakable.[12] In order to give full effect to these fundamental labor policies, the Board stated that it would

> . . . construe language relating to a checkoff authorization's irrevocability—i.e., language specifying an irrevocable duration for either 1 year from the date of the authorization's execution or on the expiration of the existing collective-bargaining agreement—as pertaining only to the method by which dues payments will be made *so long as dues payments are properly owing*. We shall not read it as, by itself, a promise to pay dues beyond the term in which an employee is liable for dues on some other basis. Explicit language within the checkoff authorization clearly setting forth an obligation to pay dues even in the absence of union membership will be required to establish that the employee has bound himself or herself to pay the dues even after resignation of membership. [Id. 328–329.][13]

[8] No such employees were ever identified by Local 1046. In addition, just prior to the hearing, the parties agreed to a partial settlement addressing the allegations of unlawful conduct by the Respondents with respect to the May 1 submissions, and covering 44 employees—originally alleged as discriminatees—whose resignation/revocation forms apparently were dated, as well as submitted, during the contract-expiration window period.

[9] See *Postal Service*, 279 NLRB 40, 42 fn. 5 (1986), enf. denied 827 F.2d 548 (9th Cir. 1987).

[10] Although we note that all but two of the alleged discriminatees submitted explicit requests to revoke their checkoff authorizations as well as membership resignations, all that *Lockheed* requires to effectuate revocation of a checkoff authorization, in the appropriate circumstances, is resignation from union membership. See *Baltimore Sun Co*., 302 NLRB 436, 437 (1991).

[11] See *NLRB v. Postal Service*, 833 F.2d 1195 (6th Cir. 1987); *NLRB v. Postal Service*, 827 F.2d 548 (9th Cir. 1987).

[12] *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983).

[13] In *Lockheed*, the Board left open the question of how its waiver rule would apply in the context of a lawful union-security provision. In the absence

Applying the *Lockheed* analysis to the facts of this case, we note first that each of the alleged discriminatees executed a checkoff authorization form containing the language set forth in section I of this decision. We find that in signing the authorizations these employees did not clearly and unmistakably waive their right to refrain from assisting Local 1046 for periods when they were not union members. In other words, they did not clearly agree to have deductions made subsequent to their submission of resignations from union membership. Accordingly, we find that the employees' checkoff authorizations were conditioned on their union membership, and were revoked when they ceased being members of Local 1046.

Therefore, with respect to the unfair labor practice allegations against Respondent Local 1046, we conclude that subsequent to its receipt of membership resignations from employees on October 31, December 16, May 1, and on or about May 16 and 19, its continued acceptance of union dues deducted from these employees' wages and its refusal to honor their effective revocation of checkoff authorizations restrained and coerced them in the exercise of their Section 7 rights and violated Section 8(b)(1)(A). See *Lockheed*, supra; *E-Systems, Inc*., 302 NLRB 352, 354 (1991); *Gerland's Food Fair*, 302 NLRB 336, 338 (1991). However, the complaint does not allege and the record does not establish that Local 1046 took affirmative steps to cause Smithfield to continue to deduct these employees' dues after their membership resignations. Accordingly, the complaint's 8(b)(2) allegations are dismissed. See *Lockheed*, supra at 330.

Concerning the unfair labor practice allegations against Respondent Smithfield, we conclude that following its receipt of notice of employees' union membership resignations on or about October 31 and on May 1, its continued deduction of dues from these employees' wages, and its refusal to honor their effective revocation of checkoff authorizations interfered with, restrained, and coerced them in the exercise of their Section 7 rights in violation of Section 8(a)(1) and (3) of the Act. *E-Systems*, supra at 354; *Gerland's*, supra; see also *Lockheed*, supra at 329.

Regarding Local 1046's position that certain of the revocation/resignation documents received from Langhorne on May 1 were ''stale-dated'' and invalid, we point out initially that under our *Lockheed* analysis there is only one employee, Barbara Winslow, whose document the Union conceivably could assert was ''stale.''[14] There are several other discriminatees whose forms, establishing notice to Smithfield of their membership resignations, were received by Smithfield up to several months after their execution dates and delivery to Local 1046. In any event, taking account of the particular facts of this case, especially the rival union campaign and Langhorne's status as president of the IFWU, we find no merit in Local 1046's view. All the assertedly ''stale'' documents state on their face an unambiguous intention to resign from the Union. There is no dispute that the signatures are authentic. There is no evidence that Langhorne did not act with the authorization of the employees whose documents he delivered on May 1. In these circumstances, if Local 1046 or Smithfield perceived any basis for doubting the legitimacy of the intention expressed on any of the documents, it was within their power simply to make direct contact with the employee at issue to confirm his or her intention. See *Newport News Shipbuilding & Dry Dock Co*., 253 NLRB 721, 732 fn. 36 (1980), enfd. sub nom. *Peninsula Shipbuilders Assn. v. NLRB*, 663 F.2d 488, 493 (4th Cir. 1981). There is no evidence on this record that either Respondent took such steps.

of a union-security clause requiring union membership here, the *Lockheed* test is applicable to this case.

[14] Winslow executed her form on December 4; it was not received by the Respondents until May 1. The documents establishing the membership resignations of all other discriminatees carried execution dates relatively close in time to their delivery to Local 1046.

AMENDED CONCLUSIONS OF LAW

1. By refusing to honor employees' effective revocation of checkoff authorizations and by continuing to accept union dues deducted from their wages after these employees had resigned from membership in Local 1046, where the terms of their voluntarily executed checkoff authorizations did not clearly and explicitly impose any postresignation dues obligation on them, Local 1046 has restrained and coerced employees in the exercise of their Section 7 rights and has violated Section 8(b)(1)(A) of the Act.

2. By refusing to honor employees' effective revocation of checkoff authorizations and by continuing to deduct union dues from their wages after receiving notice of their union membership resignations, where the terms of their voluntarily executed checkoff authorizations did not clearly and explicitly impose any postresignation dues obligation on them, Smithfield has interfered with, restrained, and coerced employees in the exercise of their Section 7 rights and has violated Section 8(a)(1) of the Act. We also find that it violates Section 8(a)(3) on the ground that it constitutes discrimination in regard to a condition of employment that encourages union membership.

REMEDY

Having found that the Respondents have engaged in the unfair labor practices described above, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondents must give full force and effect to the employees' revocation of their checkoff authoriza-

tions. In addition, the Respondents, jointly and severally where appropriate, shall make the employees whole for any moneys deducted from their wages for the period following the dates of their union membership resignations, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Our review of the record establishes that there are 93 discriminatees whose rights are covered by our Order and whose names are listed below. We have divided them into three categories, pursuant to the nature of the Respondents' liabilities. The first category lists those employees who submitted resignation/revocation forms only to Local 1046 or otherwise resigned from the Union without notice to Smithfield, thus establishing Local 1046's sole liability for the unlawful, continued withholding of union dues from these employees' wages. The second category lists those employees who submitted resignation/revocation forms on October 31 and December 16 to the Union only, and on May 1 provided effective notice of their membership resignations to Smithfield, thus establishing an initial period of Local 1046's sole liability, followed by a period of the Respondents' joint and several liability. The third category consists of those employees whose resignation/revocation forms were submitted to both Respondents at or about the same time, thereby establishing the joint and several liability of the Respondents for all moneys due them under this Order. In making these remedial determinations, we have, to the extent possible, taken account of the likely limiting effect of the partial settlement agreement covering several of the listed discriminatees with respect to the Respondents' withholding of dues on and after May 1. In addition, we have relied substantially on the documentary evidence in the record, the parties' stipulations (marked ''ALJ exhibit 1''), the October 27, 1989 consolidated complaint, as amended, and ''Attachment I,'' appended to the General Counsel's posthearing brief to the judge, as verified by the record. We leave to the compliance stage of this proceeding any further remedial issues that may arise with respect to the Order.

Category One.[15]

Doris Boone/Blount	Hurley Jones
Johnrene Cary	Norman Newby
Octavia Conner	Richard Pruden
Ethel Harper	Dennis White
Gwendolyn Johnson	

Category Two.

George Conner	Tony Powell
Vincent Davis	Major Riddick
Linda Eley	Jacqueline Robinson
Joyce Grandison	Rosetta Tucker
Eva Holloman	Jacqueline Warren
John Lawrence	Wanda Whitfield
Carolyn Newby	Eula Woodson

Category Three.[16]

Mabel Artis	Theodore Holley, Jr.
Robert Artis	Juanita Holloman
Alvin Ballard	Mary Holloman
Shirley Banks	Lindell Hunter
Debra Batten	Rachel Jackson
Doris Bowser	Delorise Jones
Tillie Branch	Tyrone Johnson
Elsie Chatman	James Jones
Gail Cooper	Ralph Jones
Helen Cotten	Rosetta Jones
Kevin Dale	Walter Jones
Clara Davis	Benjamin Mann
John Davis	Doris Moody
Gwendolyn Debrew	Otis Palmer
Odell Deloatch	Clyde Parrish
Terry Diggs	Cindy Ralph
James Dillard	Richard Ralph
Eunice Dunn	Pamela Ricks
Charles Eley	Russell Ricks
Elvis Eure	Willie Riddick
Clarrer Evans	William Savage
Mary Evans	Daryl Sessons
Priscilla Gary	Melvin Slade
Francine Gay	Sandra Smith
Teressa Gholston	Lee Stokes
James Goodwin	Rosa Towns
Dorothy Graves	Betty Vaughan/Artis
Cathy Green	Richard Watford
Sarah Greene	Antonie White
Alexander Hall	James White
Bonnie Harris	Rhonda Whitfield
Iristeen Harvey	Barbara Winslow
Tracy Hill	Eunice Woodis
James Hite	Fred Wright
Augustus Holley	Earl Wynn

ORDER

The National Labor Relations Board orders that

[15] This category includes employees who submitted resignation/revocation documents only to Local 1046 on October 31 and December 16; several of these employees are covered by the partial settlement agreement. It also includes two employees, Johnrene Cary and Norman Newby, who submitted handwritten resignations to the Union on or about May 16 and 19, respectively, and one employee, Doris Boone/Blount, whose employment terminated subsequent to her membership resignation.

[16] All the employees listed in this category except Barbara Winslow submitted resignation/revocation documents to both Respondents on or about October 31; Winslow first submitted her document to both Respondents on May 1. Many of these employees are covered by the partial settlement agreement. This category also includes seven employees—Kevin Dale, Lindell Hunter, Doris Moody, Daryl Sessons, Earl Wynn, Gail Cooper, and Tracy Hill—whose employment terminated subsequent to their membership resignations.

A. Respondent Employer, Smithfield Packing Company, Inc., Smithfield, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to honor employees' effective revocation of dues-checkoff authorizations and continuing to deduct union dues from their wages after receiving notice of their union membership resignations, where the terms of their voluntarily executed checkoff authorizations did not clearly and explicitly impose any postresignation dues obligations on them.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole jointly and severally with Respondent Food Processors Local 1046 of the Laborers' International Union of North America, the employees listed in categories two and three of the remedy section of this Decision and Order for any dues deductions from their wages for the period following Smithfield's receipt of notice of their resignations from union membership, with interest, all as more fully set forth in the remedy section.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Smithfield, Virginia, copies of the attached notice marked ''Appendix A.''[17] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by Respondent Smithfield's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Smithfield to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Post at the same places and under the same conditions as set forth in paragraph A,2,(c), above, as soon as forwarded by the Regional Director, copies of the attached notice marked ''Appendix B.''

(e) Mail signed copies of the attached notice marked ''Appendix A'' to the Regional Director for posting by Respondent Local 1046.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Smithfield has taken to comply.

B. Respondent Union, Food Processors Local 1046 of the Laborers' International Union of North America, Smithfield, Virginia, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to honor employees' effective revocation of dues-checkoff authorizations and continuing to accept union dues deducted from their wages after these employees had resigned from membership in Local 1046, where the terms of their voluntarily executed checkoff authorizations did not clearly and explicitly impose any postresignation dues obligations on them.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole, jointly and severally with Respondent Smithfield where appropriate, the employees listed in categories one, two, and three of the remedy section of this Decision and Order for any dues deductions from their wages for the period following their resignations from union membership, with interest, all as more fully set forth in the remedy section.

(b) Post at its offices and meeting halls in Smithfield, Virginia, copies of the attached notice marked ''Appendix B.''[18] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by Respondent Local 1046's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Local 1046 to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Post at the same places and under the same conditions as set forth in paragraph B,2,(b), above, as soon as forwarded by the Regional Director, copies of the attached notice marked ''Appendix A.''

(d) Sign and return to the Regional Director sufficient copies of the notice marked ''Appendix B'' for posting by Respondent Smithfield at all places where notices to employees are customarily posted.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Local 1046 has taken to comply.

[17] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[18] See fn. 17 above.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to honor employees' effective revocation of dues-checkoff authorizations and WE WILL NOT continue to deduct union dues from their wages after receiving notice of their union membership resignations, where the terms of their voluntarily executed checkoff authorizations do not clearly and explicitly impose any postresignation dues obligations on them.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole, jointly and severally with Food Processors Local 1046 of the Laborers' International Union of North America, the employees listed in categories two and three of the remedy section of the Board's decision for any dues deductions from their wages for the period following our receipt of notice of their resignations from union membership, with interest.

SMITHFIELD PACKING COMPANY, INC.

APPENDIX B

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to honor employees' effective revocation of dues-checkoff authorizations and WE WILL NOT continue to accept union dues deducted from their wages after they have resigned from membership in the Union, where the terms of their voluntarily executed checkoff authorizations do not clearly and explicitly impose any postresignation dues obligations on them.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole, jointly and severally with Smithfield Packing Co., Inc. where appropriate, the employees listed in categories one, two, and three of the remedy section of the Board's decision for any dues deductions from their wages for the period following their resignations from union membership, with interest.

FOOD PROCESSORS LOCAL 1046 OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA

Stephen C. Bensinger, Esq. and *Sherrie T. Black, Esq.*, for the General Counsel.
Thomas L. Ross, Vice President, Human Resources, of Smithfield, Virginia, for the Respondent Employer.
Laurence E. Gold, Esq. (Connerton, Ray & Simon), of Washington, D.C., for the Respondent Union.
Victor C. Langhorne, pro se, of Smithfield, Virginia.

DECISION

STATEMENT OF THE CASE

DONALD R. HOLLEY, Administrative Law Judge. On original charges filed in Cases 5–CA–20106 and 5–CB–6180 by Deloris Jones, an individual, on November 14, 1988, the Regional Director for Region 5 of the National Labor Relations Board issued a consolidated complaint on March 30, 1989, which alleged, inter alia, that since October 31, 1988, Smithfield Packing Company, Inc. (Respondent Smithfield) has engaged in conduct which violates Section 8(a)(1) and (3) of the National Labor Relations Act, and that, since the same date, Food Processors Local 1046 of the Laborers' International Union of North America (Respondent Union) has engaged in conduct which violates Section 8(b)(1)(A) and (2) of the Act. In sum, the consolidated complaint alleged that Respondent Smithfield violated Section 8(a)(1) of the Act by refusing to honor revocations of dues-checkoff authorizations of certain named employees notwithstanding the fact that they had effectively resigned their membership in Respondent Union, and that it had violated Section 8(a)(3) of the Act by continuing, after such named employees resigned their membership in the Union, to deduct union dues from their wages and remit them to Respondent. Additionally, the consolidated complaint alleges that Respondent Union violated Section 8(b)(1)(A) of the Act by refusing to honor revocation of dues-checkoff authorizations of certain named employees after they had effectively resigned their membership in the Union, and it violated Section 8(b)(2) of the Act by continuing to accept union dues deducted from the wages of such employees by Respondent Smithfield notwithstanding that such named employees had effectively resigned their union membership. Respondent Smithfield and Respondent Union filed timely answers denying they had engaged in the unfair labor practices alleged. Thereafter, on May 24, 1989, Victor Langhorne, an individual (Langhorne), filed the original charges in Cases 5–CA–20479 and 5–CB–6297, and on October 27, 1989, the Regional Director for Region 5 issued an order consolidating the four cases for trial together with a second consolidated complaint. In sum, the alleged violations set forth in the March 30, 1989 consolidated complaint were realleged in the October 27, 1989 consolidated complaint and the latter consolidated complaint alleged additional similar violation of Section 8(a)(1) and (3) and Section 8(b)(1)(A) and (2) by Respondents since on or about April 17 and May

3, 1989. The Respondents filed timely answers denying they had violated the Act as alleged in the second consolidated complaint.

The case was heard in Smithfield, Virginia, during the period January 29 through 31, 1989.[1] All parties appeared and were afforded full opportunity to participate. On the entire record,[2] including consolidation of post-hearing briefs filed by the parties, and from my observation of the demeanor of the witnesses who appeared and gave testimony, I make the following

FINDINGS OF FACT

I. JURISDICTION

Jurisdiction is not in dispute. Respondent Smithfield, a Virginia corporation, operates a meat packing plant in Smithfield, Virginia, and during the 12-month period preceding the issuance of both consolidated complaints it admittedly sold and shipped from its Smithfield facility goods, products, and materials valued in excess of $50,000 directly to points located outside the State of Virginia. It is admitted by the Respondents, and I find, that Respondent Smithfield is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. STATUS OF LABOR ORGANIZATION

It is admitted, and I find, that Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

Respondent Union represents a bargaining unit comprised of 1200–1300 employees at Respondent Smithfield's meat packing plant located in Smithfield, Virginia. The Respondents have been parties to a series of collective-bargaining agreements, including one in effect during the period July 1, 1985, to June 2, 1989, and a successor agreement which is now in effect. Article III of each agreement is identical and states, in relevant part (Jt. Exhs. 1 and 2):

ARTICLE III

Check-Off

Upon written authorization by employees who are members of the Union or who wish to become members, the Company will make deductions for Union dues in accordance with the stipulation in the voluntary check-off authorization in an amount certified by the Union to the Company. The Company will make deductions for Union dues from all members of each week of employment except in cases of layoff, leave of absence, and termination. Back dues will be deducted from Union members for a maximum of four (4) weeks in the case of absence from work. The Company will deliver by the 10th of each month, the sum to the Financial Secretary of the Union or such officers of the Union as it may designate in writing upon his receipt therefor:

The authorization shall be as follows:

I hereby authorize and direct my employer to deduct from my wages my dues owing to the Union and direct that such amounts so deducted to be sent to the Secretary-Treasurer of such Local Union for and on my behalf.

This authorization and assignment shall be irrevocable for the period of the existing contract between my employer and the Union, or for one year, whichever is less, and shall automatically renew itself for successive contract or annual periods, unless I give written notice of my desire to revoke same to the Company and the Union at least sixty (60) days, and not more than seventy-five (75) days,before the periodic renewal dates of this authorization and assignment. The periodic renewal date shall be determined by the date the authorization was signed.

The checkoff authorization forms signed by Respondent Smithfield's employees to cause union dues to be deducted from their wages are as follows (G.C. Exh. 4):

Checkoff Authorization

I hereby authorize and direct my Employer to deduct from my wages Initiation Fees (where applicable) and Working Dues _____ owing to Local Union No. ____ of the Laborers' International Union of North America and direct that such amounts so deducted be sent to the Secretary-Treasurer of such Local Union for and on my behalf.

This authorization and assignment shall be irrevocable for the period of the existing contract between my Employer and said Local Union, or for one year, whichever is less, and shall automatically renew itself for successive contract or annual periods, unless I give written notice of my desire to revoke same to the company and to said Local Union at least sixty (60) days,

[1] Pars. 7(c) and 10(c) were added to the complaint at the outset of the trial. In sum, par. 7(c), with appropriate amendment of pars. 9(a) and (b), alleges employees Doris Blount, Vincent Davis, Eva Holloman, Rosetta Tucker, Tony Powell, and Major Riddick notified Respondent Union they were resigning their membership on December 16, 1988, and Respondent Union thereafter violated Sec. 8(b)(1)(A) and (2) by refusing to honor their revocation of dues-checkoff authorization and by continuing to accept dues deducted by Respondent Smithfield. Similarly, par. 10(c), with appropriate amendment to pars. 12(a) and (b), alleges employees Johnrene Cary and Norman Newby notified Respondent Union they were resigning their membership on May 16, 1989, and that Respondent Union violated Sec. 8(b)(1)(A) and (2) by refusing to honor the resulting revocation of their dues-checkoff authorizations and by accepting dues which were deducted from the employees wages by Respondent Smithfield. See G.C. Exh. 1-X, which is herewith received in evidence.

[2] During the course of the hearing, the parties agreed to some 13 stipulations which were read into the record. After the hearing was closed, the General Counsel furnished undersigned and opposing counsel with a single typewritten document which set forth the 13 stipulations. Noting that no party would be prejudiced if the typed document were received in evidence and that receipt of same would aid those reviewing the record in this case, I hereby receive the typed stipulations, together with counsel for General Counsel's transmittal letter dated February 9, 1990, in evidence as ALJ Exh. 1.

and not more than seventy-five (75) days before the periodic renewal dates of this authorization and assignment.

Social Security No. _____
_____ Signed
Date _____

All the alleged discriminatees involved in the instant case executed a Local 1046 checkoff authorization form.[3]

On June 3, 1988, the Laborers' International Union placed its Local 1046 in trusteeship. Connie Ellis, an International representative, was designated to be the trustee for Respondent Union.

At some point during the summer of 1988, Respondent Smithfield employee Russell Ricks, formerly vice president and a steward of Local 1046, and other former officers of the Local, were desirous of ending the trusteeship and regaining control of the Local Union. Ricks discussed the situation with Victor Langhorne, a college graduate who had acted as a consultant to Local 1046, and subsequently as a secretarial employee of the Local, before the trusteeship was imposed. Their discussions led to the scheduling of a meeting at Jones Bar and Grill in Smithfield on August 30, 1988. Some 17 to 24 Respondent Smithfield employees, including former executive board members of the Local, attended the meeting. After designating themselves to be the ''Ad Hoc Committee of Concerned Employees of Smithfield Packing Company,'' they requested that Langhorne compose a letter to Laborers' International General President Angelo Fosco. Additionally, Langhorne testified he was requested to research various strategies and options open to them and to find a location where a second meeting could be held on September 13, 1988.

The dissident members of Respondent Union attended a second meeting at the Brown AME church in Smithfield, Virginia, on September 13, 1988. Between 50 and 100 employees attended. During the course of the meeting the subjects discussed included resignation from Respondent Union, revocation of checkoff authorizations previously executed by employees, and the formation of an independent union. Langhorne moderated the discussion and explained his understanding of the ''quid pro quo'' line of cases previously decided by the Board. The employees attending the meeting voted to establish an independent union which would be called the Independent Food Workers Union (IFWU). A third meeting was scheduled to be held at the same location on September 27, 1988.

Prior to the time the September 27, 1988 meeting was held, Langhorne appointed himself the interim president of IFWU, and he appointed former Local 1046 Vice President Ricks to be the vice president of IFWU. Additionally, he drafted a resignation/revocation form which was to be presented to Respondent Smithfield employees who wished to withdraw their membership in Respondent Union, and to revoke the checkoff authorizations they had previously executed in favor of Respondent Union. General Counsel's Exhibit 2(a)–1 is a representative sample and states:

SMITHFIELD PACKING CO.
Smithfield, VA 23430
TO WHOM IT MAY CONCERN:

I hereby revoke authorization for union dues checkoff deduction for Food Processors Local Union 1046 as I am also hereby immediately resigning membership in said Local.

I am providing a duplicate notice of this revocation to the union.

Please note that the National Labor Relations Board has held that when an employee effectively resigns membership in the union, the financial obligation he undertook as a *quid pro quo* for such membership also ceases, and the dues checkoff is revoked by operation of law, more restrictive language in the checkoff agreement notwithstanding (*Labor and Employment Law of Virginia*, 1987, p. 27).

/s/ Mabel E. Artis
_____
Signature/Name
225–46–8230
_____
Social Security Number
10–6–88
_____
Date

cc
Food Processors Local 1046
c/o Mary Pritchett, Acting Business Agent

When Langhorne appeared at the September 27, 1988 meeting, he produced approximately 500 blank copies of the above-described resignation/revocation document. Some 40 employees and the acting business manager of Local 1046, Mary Pritchard, attended the meeting.[4] Langhorne testified he informed those attending that if they wanted to resign their membership in Local 1046 and have their dues-checkoff authorizations revoked, they should execute two resignation/revocation documents forms and turn in a copy to both Respondent Smithfield and Respondent Union. He testified he suggested an alternative with respect to delivery of the forms by indicating he would serve executed forms on Respondent Union if employees delivered executed forms to him. He indicated he would remain available at the church at quitting time periods for the next few weeks.

During the months of September and October 1988, Langhorne, assisted by Respondent Smithfield employees Clara Davis, James Jones, and Ricks, collected executed resignation/revocation forms from approximately 87 different Respondent Smithfield employees. Langhorne testified he personally collected 60–65 forms, and that Davis, Jones, and Ricks each collected 10–12 forms each. The parties stipulated that the signers of the 87 forms understood that someone would arrange, shortly after they signed the letters (forms) for the appropriate submission of the letters to Respondent Union (see G.C. Exhs. 2(b)–1 through 87). It is uncontradicted that Langhorne hand-delivered the above-described 87 executed resignation/revocation forms to Respondent Union on October 31, 1988, together with a cover letter which he prepared but was signed by Deloris Jones. The parties stipulated that Respondent Union considered each of the

[3] A separate application for union membership form is attached to the checkoff authorization. See G.C. Exh. 4.

[4] The complaint was amended to reflect the correct spelling of Pritchard's name and her status at the outset of the trial.

employees whose resignation/revocation forms are included (G.C. Exhs. 2(b)–1 through 87) to have resigned their membership in the Respondent Union effective October 31, 1988.[5]

On receipt of 87 above-described resignation/revocation documents, Trustee Ellis caused his secretarial employees to ascertain whether any employees had submitted resignations/revocations of checkoff authorization not sooner than 75 days nor less than 60 days prior to the anniversary date of their then-current checkoff authorization, copies of which were on file at both Respondents. It was ascertained that employees Betty Goodwin, Eledline Bradshaw, and Mildred Wynn had submitted dues-checkoff authorization revocations within the prescribed period prior to the anniversary dates of the checkoff authorizations they had executed. Accordingly, Ellis notified Respondent Smithfield's personnel office to cease deduction of union dues from the wages of such employees if it had also received timely notification of the employee's intent to revoke their checkoff authorizations. The parties stipulated that the dues were last checked off by Respondent Smithfield from the wages of Bradshaw, Betty Goodwin, and Mildred Wynn on October 30, 1988.[6] While the record reveals that employee James Goodwin also gave timely notice within his anniversary date of his intent to revoke his dues-checkoff authorization, it was stipulated that Respondent Smithfield continued to deduct union dues from his wages until the pay period ending November 17, 1988.

It is uncontradicted that with exception of Bradshaw, the two Goodwins and Mildred Wynn, all the employees who submitted resignation/revocation documents to the Respondents on or near October 31, 1988, were considered to have resigned their membership in the Union but were not deemed by either Respondent to have submitted timely dues-checkoff authorization revocations within either of the window periods set forth in the contract, i.e., within not more than 75 nor less than 60 days from the anniversary date on the card and/or not more than 75 nor less than 60 days prior to the expiration of the then current collective-bargaining agreement. The Respondent Union notified all involved employees except the above-named employees who had submitted timely checkoff authorization revocations by letter dated December 8, inter alia, that it would honor their membership resignation but ''your attempt to revoke that authorization was ineffective because, contrary to their requirements of article III of the collective-bargaining agreement, your request was not received by the Union at least 60 days and not more than 75 days before the periodic renewal date of that authorization.''

[5] App. A to the consolidated complaint contains the names of 77 alleged discriminatees. During the trial, the General Counsel was permitted to amend the complaint by deleting the names Gwendolyn Jackson, John Lawrence, Richard Pruden, and Wanda Whitfield from App. A and moving them to App. B. In its brief, the General Counsel moved that the complaint be further amended by deleting the name Carolyn Newby from App. A and inserting it in App. B. That motion, which is not opposed, is hereby granted. The end result of the described amendments to complaint is that App. A to the complaint now names 72 alleged discriminatees. As noted, infra, the parties are agreed that each of the 72 employees now named in App. A notified both Respondent Union and Respondent Smithfield during the fall of 1988 that they were resigning their membership in Local 1046, and that they wished to revoke their dues-checkoff authorizations in favor of Respondent Union.

[6] The General Counsel moved in its brief, without opposition, to delete the names of Bradshaw, Betty Goodwin, and Mildred Wynn from Apps. A and B of the complaint. The motion is hereby granted.

Langhorne testified that subsequent to October 31, 1988, he received several additional executed resignation/-revocation documents from Respondent Smithfield employees. It is uncontradicted that Respondent Union received by mail six additional resignation/revocation documents from Respondent Smithfield employees on December 16, 1988 (Doris Blount-a/k/a Doris Boone, Vincent Davis, Eva Holloman, Tony Powell, Major Reddick, and Rosetta Tucker). Respondent Union sent each of the named employees letters honoring their membership resignations, but refusing to honor their revocations of checkoff authorizations. Respondent Smithfield admittedly was served by the named employees with copies of their resignation/revocation documents, but it continued to deduct moneys from their pay and forward same to Respondent Union.

Langhorne testified that he conducted a meeting at the Brown AME church in early April 1989 and that 15 to 20 Respondent Smithfield employees attended. He indicated he distributed additional copies of the resignation/revocation form he had prepared during the fall of 1988 to the employees during the meeting, indicating to those present that if they executed two forms, he would undertake to deliver them to both Respondents during the contractual checkoff authorization revocation period which preceded contract expiration and was set forth in article III of the subsisting contract (stipulated to be April 18 through May 3, 1989). Langhorne explained he would once again remain available at the church at convenient times to accept executed forms. He indicated he informed those present that he hoped to receive all executed forms by April 25 or 26, 1989.

According to Langhorne, he, with the assistance of Davis, Jones, and Ricks, collected approximately 40 to 50 newly executed resignation/revocation forms from Respondent Smithfield employees during April 1989. On April 27, 1989, Langhorne mailed 103 executed resignation/revocation forms to both Respondents together with identical cover letters written on IFWU stationery which designated him as president of that Union. The body of the letters (G.C. Exhs. 3(a)–106 and G.C. Exhs. 3(b)–103) stated:

> I am enclosing 103 employees written notice of revocation of their authorization for deduction of union dues.
>
> Note that I am giving you their written notification at least sixty (60) days, and not more than seventy-five (75) days before the termination, July 2, 1989, of the current collective bargaining agreement.
>
> The resubmission of written notice by some employees at this time does not detract from the pending formal charges of unfair labor practices referenced above.
>
> For convenient reference I have attached a list of the names of the employees whose written notices are enclosed.

Langhorne indicated during his testimony that in addition to sending the Respondents resignation/revocation documents which had been newly executed during the spring of 1989, he included in the April 27, 1989 packet photocopies of those resignations/revocations which had been executed during the September–December 1988 period if the employees had not executed fresh documents during the spring of

1989.[7] Langhorne indicated that only one employee, John Henry Davis, expressly asked him to resubmit the form he had executed in 1988. Langhorne failed to indicate that any of the remaining 1988 signers of the resignation/revocation forms were aware that he had resubmitted their 1988 forms.[8] At the time Langhorne submitted resignation/revocation forms to the Respondents in April 1989, former Respondent Smithfield employees Gail R. Cooper and Tracy C. Hill were no longer employed by Smithfield. Cooper's employment ceased January 3, 1989, and Hill's employment ceased on December 9, 1988. The General Counsel, moved without opposition, that their names be deleted from Appendix C of the complaint, and I hereby grant that motion.

Langhorne indicated during his testimony that immediately after IFWU was formed in September it commenced to obtain signatures on a petition to permit it to request that a decertification election be held at Respondent Smithfield. During cross-examination, when questioned about the circumstances which prevailed during the month of April 1989, he acknowledged that both IFWU and Local 1046 were seeking to cause employees to support their respective Unions, and that employees were switching their allegiance from one Union to another.

With respect to the extent of communication with those employees whose 1988 resignation/revocation documents were submitted in late April 1989, Langhorne admitted employees were not contacted individually, in person or otherwise, before or after their 1988 forms were resubmitted.

Trustee Ellis admitted during his testimony that he received the packet of resignation/revocation forms mailed by Langhorne on or about May 1, 1989. It is uncontradicted that Respondent Union failed and refused to honor both the membership resignations and the attempted checkoff authorization revocations of all employees whose forms were received by it on May 1, 1989. Ellis acknowledged that he advised Langhorne of Respondent Union's intended course of action by letter dated May 10, 1989, the body of which states:

> Twice during the last week I have received from you in the mail ''To Whom It May Concern'' statements, each stating that the signer ''revoke(s) authorization for union dues checkoff deduction for Food Processors Local Union 1046 as I am hereby immediately resigning membership in said Local.'' Under the checkoff rules, an employee can revoke checkoff by giving written notice to both the Union and the Company at least 60 and no more than 75 days before the expiration date of the collective bargaining agreement. Most of the forms you mailed to me, however, show signatures dated long before this window period. Also, we have been contacted by numerous employees whose names appear on some of the forms provided, including employees whose names appear with dates during the window period, who have told us that the forms bearing their names should be disregarded by the Union.
>
> The Union will honor any valid resignation from membership and any checkoff revocation properly submitted during the window period. However, in light of the facts that we have no reason to believe that anyone has authorized you to transmit these forms to the Union, that most are dated outside the checkoff revocation window period, and that some employees have told us to disregard the forms bearing their names, the Union cannot simply honor these forms. We will need direct confirmation from employees whose resignations and revocations were actually signed during the window period that they authorized you to transmit them to the Union and the company.
>
> I am sending a copy of this letter to every employee whose name appears on a form dated during the window period.

The employees who received a copy of the above-quoted letter (G.C. Exh. 8) were, with exception of employees Alexander Hall and Deloris Jones,[9] all included in the partial settlement agreement entered by the parties shortly before the trial in the instant proceeding began, and their names have been deleted from Appendices C and D to the complaint.[10]

When he appeared as a witness, Ellis testified he was of the view in the spring of 1989 that checkoff authorization revocations were not timely unless they were both dated and delivered to both Respondents during the window period. While he claimed employees had told him before he received the forms in the spring to disregard their forms, he failed to identify specific employees who told him that. Finally, he admitted that Langhorne's involvement in the delivery of the forms was a factor he considered when deciding how the forms would be processed.

The record reveals that during the period extending from May 14–22, 1989, 14 employees sent Respondent Union notes advising it they wished to ''resign'' or ''get out'' of Local 1046 (S. Banks; D. Batten; T. Gholston; B. Harris; T. Johnson; J. Lawrence; J. Robinson; R. Whitfield; P. Ricks; L. Stokes; E. Woodis; E. Wynn; Johnrene Cary; and Norman Newby).[11] Additionally, Respondent Smithfield employee Darryl Sessons submitted a May 22, 1989 letter to Respondent Union which stated: ''I WILL LIKE FOR YOU TO STOP TAKING UNION FEE OUT OF MY CHECK.'' While Ellis testified at trial that Respondent Union found the ''resignation'' letters to be sufficient to effectuate resignation from Local 1046, most of the above-named employees were

[7] Langhorne testified he did not submit employee George Reed's 1988 form because he had been advised Reed did not want it submitted.

[8] The record reveals Respondent Smithfield employee Barbara Wilson executed resignation/revocation forms on December 4, 1988, but they were not submitted to either Respondent during 1988. Langhorne included her 1988 forms in the April 27, 1989 mailing to both Respondents.

[9] Charging Party Jones was not included in the partial settlement because she failed to serve a spring resignation/revocation document on Respondent Smithfield.

[10] The employees whose names were deleted are: Willie Addison, James Ballard, Doris Boone/Blount, Franklin Boone, Mamie Boone, Elsie Chatman, Clara Davis, Ursula Day, Gwendolyn Debrew, Odell Deloatch, Eunice Dunn, Timothy Edwards, Charles Eley, Mary Evans, Sarah Greene, Augustus Holley, Theodore Holley, Jacqueline Holloman, Juanita Holloman, Mary Holloman, James Jones, Ralph Jones, Rosetta Jones, Walter Jones, William Key, Derek Outlaw, Valerie Outlaw/Roberts, Otis Palmer, Howard Perry, Gladys Pittman, Richard Pruden, Shelton Rankins, Russell Ricks, William Savage, Melvin Slade, Sandra Smith, Harlee Turner, Betty Vaughan/Artis, Bennie Watford, Richard Watford, Deneen Whitaker and Dennis White.

[11] By note dated July 16, 1989, employee Major Riddick informed Respondent Union he desired to ''get out of the Union.'' Respondent Union did not respond to his note.

mailed letters such as one dated May 30, 1989, and addressed to Shirley Banks which stated (G.C. Exh. 9(a):

> Dear Ms. Banks:
>
> On May 24, 1989, the office of Food Processors' Local Union 1046 received through the mail a form signed with your name that states that the signor ''hereby revoke(s) authorization for union dues checkoff deduction for Food Processors' Local Union 1046 as I am hereby immediately resigning membership in said Local.'' This form was dated May 17, 1989.
>
> Because Local 1046 did not receive this form from you, Local 1046 cannot verify that, in fact, you signed this form and that you authorized it to be sent to the Union for you. In any event, however, please be advised that the form is dated outside of the period set forth in the dues check-off rules during which an employee can revoke his or her dues check-off, namely, at least 60 and no more than 75 days before the anniversary date of the check-off authorization, or between 60 and 75 days before the expiration date of the collective bargaining agreement. Accordingly, your dues check-off will continue. However, your right to resign from Union membership is not restricted to any particular dates. In order for the Union to verify that you intended to resign your Union membership, it will be necessary for you to advise me that you signed the form and authorized this form to be sent to my office. You may do so by writing to me at the above address, or by notifying me or Acting Assistant Business Manager Mary Pritchard in person, that you signed the form and authorized it to be sent to our office for you.
>
> Yours truly
> /s/Connie L. Ellis
> Trustee, Local 1046

While Ellis claimed the letters sent to Banks, Sessons, and others were sent erroneously, Respondent Union did not, if and when it discovered the error(s), seek to rectify them. The record fails to reveal that any of the above-named employees responded after receiving correspondence from Respondent Union in late May or early June 1989.

Contentions of the Parties

Noting two courts have rejected the quid pro quo theory utilized by the Board in *San Diego District Council of Carpenters (Campbell Industries)*, 243 NLRB 147 (1979), and its progeny,[12] the General Counsel contends I should apply the rationale of *Pattern Makers League v. NLRB*, 473 U.S. 95 (1985), in the instant case and find the Respondents violated the Act as alleged by depriving the alleged discriminatees of their Section 7 right to be completely free of the Union on tendering their membership resignations. In the alternative, if it is concluded the alleged discriminatees' checkoff authorizations remained in force after the employees resigned their membership, the General Counsel contends the zero dues theory advanced by Board Member Johansen should be utilized.[13]

Respondent Union, observing that Section 8(b)(1)(A) of the Act allows unions to enforce those rules which impair no policy Congress has imbedded in the labor laws, contends that enforcement of a checkoff authorization of a nonmember not only impairs no such policy, but it serves the same policies that accord vitality to union-security clauses covering nonmembers. It contends the *Pattern Makers* rationale is not applicable in checkoff-authorization situations, and claims it acted lawfully when the alleged discriminatees sought to revoke their checkoff authorizations in untimely fashion. It contends the quid pro quo theory and Member Johansen's alternative theory are not legally sustainable.

Analysis and Conclusion

While the General Counsel seeks in the instant case to cause me to ignore Board precedent and thereafter resolve the issues presented in this case by employing a *Pattern Makers* or ''zero amount dues'' analysis, the rule applicable to the issues raised here is set forth in *Machinists Local 2045 (Eagle Signal)*, 268 NLRB 635 (1984), and I am obligated to follow that precedent. In *Eagle Signal*, the Board stated (at 637):

> It is established Board law that a dues-checkoff authorization, or wage assignment as it is called in this case, is a contract between an employee and his employer and that a resignation of union membership ordinarily does not revoke a checkoff authorization. However, a resignation will, by operation of law, revoke a checkoff authorization, even absent a revocation request, where the authorization itself makes payment of dues a quid pro quo for union membership. This is so whether or not the resignation is made during the period for revocation set forth in the authorization itself. [Footnotes omitted.]

The language in the *Eagle Signal* checkoff authorization which led the Board to conclude the authorization itself made the payment of dues a quid pro quo for union membership was a direction that the Employer ''Deduct from my pay . . . my regular monthly Union dues . . . in accordance with regular membership dues in the International Association of Machinists and Aerospace Workers.'' Similar language in checkoff authorizations led to like conclusions in *Postal Service*, 279 NLRB 40 (1986), and *Postal Service*, 280 NLRB 1439 (1986), and in *Food & Commercial Workers Local 425 (Hudson Foods)*, 282 NLRB 1413 (1987).

In the above-cited cases, the Board concluded the language in the checkoff authorizations, standing alone, established the moneys checked off were the quid pro quo for union membership. In 1986, it decided *Hearst Corp.*, 281 NLRB 764 (1986), a case in which it looked beyond the authorization to reach the conclusion that moneys checked off were the quid pro quo for membership. There, the authorization provided for the deduction of ''an amount equal to all membership dues lawfully levied against me by the Guild.'' The administrative law judge concluded the language in the authorization did not equate union membership with checkoff and

[12] See *Postal Service*, 279 NLRB 40 (1986), enf. denied 827 F.2d 548 (9th Cir. 1987), and *Postal Service*, 280 NLRB 1429 (1986), enf. denied 833 F.2d 1195 (6th Cir. 1987).

[13] See, for example, *Postal Service*, 280 NLRB 1439 (1986).

found that resignation of membership did not, by operation of law, revoke the checkoff authorizations. The Board considered contract language in conjunction with the authorization language and reversed the judge. It noted the contract provided, in relevant part, that ''upon an employee's voluntary assignment, the Publisher shall deduct from the salary account of such employee and pay to the Guild . . . *all membership dues* levied by the Guild for the current month'' (emphasis supplied); and that neither the contract nor the authorization made any provision for ''financial core'' membership in the Union. It found the authorization language, the contract language, and the absence of provision for ''financial core'' membership in the Union established the checkoff moneys were a quid pro quo for membership.

Here, the checkoff authorization signed by employees authorized the deduction of ''Initiation Fees (where applicable) and *Working Dues* ____ owing to Local Union No. ____'' [emphasis supplied]. Article III of underlying contract provides, inter alia, that:

> Upon written authorization by employees who are members of the Union or who wish to become members, the Company will make deductions for Union dues in accordance with the stipulation in the voluntary check-off authorization in an amount certified by the Union to the Company.

It is uncontested that the applicable collective-bargaining agreement does not provide for ''financial core'' membership in the Union, and it is noted Virginia is a ''right to work'' State.

At first blush, it would appear that the facts in the instant case are analogous to those in *Hearst Corp*., and a conclusion that the moneys taken from the pay of employees pursuant to their checkoff authorizations constitute a quid pro quo for membership in the Union. I conclude, however, that such a conclusion is not warranted because article III of the contract provides for the deduction of ''Union dues,'' while the individual authorizations authorize the deduction of ''Working Dues.'' The record fails to reveal why the language which appears in the authorizations fails to track the language in the contract, and the record fails to reveal the meaning of the term ''Working Dues.'' In the circumstances described, I find the record fails to establish that moneys deducted by the Employer pursuant to individual authorizations signed by employees constitute a quid pro quo for union membership. Accordingly, I find that by resigning their membership in Respondent Union, employees involved herein did not, by operation of law, revoke their check authorizations.

The General Counsel's primary contention in the instant case was that employee resignation of union membership automatically revoked contractual checkoff arrangements voluntarily entered by employees with their Employer. A secondary contention was that certain employees submitted authorization revocations within an appropriate window period, but such authorizations were not honored by either Respondent. As indicated, supra, when the evidence revealed that three (3) employees submitted timely authorization revocations on or about October 31, 1988, and that the Respondents honored such authorization revocations in timely fashion, the names of those employees were withdrawn from the complaint, i.e., Betty Goodwin, Eledline Bradshaw, and Mildred Wynn. As also indicated, supra, it is uncontested that a fourth employee, James Goodwin, submitted an authorization revocation to both Respondents on October 31, 1988, and that document was served on them not more than 75 days nor less than 60 days from the anniversary date of the authorization. Although the record reveals the Respondents honored James Goodwin's authorization revocation by ceasing to deduct moneys from his pay on November 17, 1988, the General Counsel elected to leave Goodwin's name in the complaint, thus contending Respondents violated the Act by failing for slightly more than 2 weeks to honor his authorization revocation. In the absence of evidence which would reveal the anniversary date of Goodwin's checkoff authorization, I find the contention to be without merit. A final issue to be resolved concerns Charging Party Deloris Jones. The record reveals Jones submitted a checkoff authorization dated April 20, 1989, to Respondent Union on May 1, 1989. When the settlement agreement described, supra, was entered to remove certain employees from the complaint because the evidence revealed they had submitted timely authorization revocations during the window period preceding expiration of the then-subsisting contract, Jones was excluded from the settlement agreement because she had not served a revocation document bearing a contract expiration window period date on Respondent Employer. Instead, Langhorne mailed Respondent Employer a photocopy of a resignation/-revocation document Jones had executed in 1988 when he sent the 1989 spring packet of documents to Respondent Smithfield. The checkoff authorization form signed by Jones and other employees provides that revocation is to be accomplished by ''written notice of my desire to revoke same to the Company and the Union at least sixty (60) days and not more than seventy-five (75) days, before the periodic renewal dates of this authorization and assignment.'' In my view, the revocation procedure indicated is clearly stated and the procedure set forth is reasonable. I find Jones failed to accomplish revocation of her checkoff authorization because she failed to give Respondent Employer appropriate notice of her intent to revoke.

In sum, I conclude that the General Counsel has failed to prove that Respondent Smithfield and Respondent Union engaged in any of the violations alleged in the complaint. Accordingly, I recommend the complaint be dismissed in its entirety.

CONCLUSIONS OF LAW

1. Smithfield Packing Company, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondents have not engaged in the unfair labor practices alleged in the complaint.

[Recommended Order for dismissal omitted from publication.]